

VOSH PROGRAM DIRECTIVE: 12-119B**ISSUED: 01 February 2016**

Subject **Confined Spaces in Construction, Part 1926, Subpart AA, §§1926.1200 through 1926.1213; and Other Related Provisions, §1926.953, Enclosed Spaces; and §1926.968, Definitions**

Purpose This Directive transmits to VOSH personnel the new Confined Spaces in Construction standard, Subpart AA, §§1926.1200 – 1926.1213, and Other Related Provisions, including §§1926.953, Enclosed Spaces, and 1926.968, Definitions. With the adoption of the Confined Spaces in Construction Standard, the Safety and Health Codes Board also repealed the following which were supplanted by the new federal Confined Spaces in Construction Standard: Virginia Unique Standard for Confined Spaces in Construction, 16VAC25-140-10 *et seq.*, Underground Construction Standard, and 16VAC25-150, *et seq.*, and Virginia Excavation Standard, Construction Industry, 16VAC25-170-10, *et seq.*

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope This Directive applies VOSH-wide.

Reference 80 FR 25365 (04 May 2015)

Cancellation VOSH PD 12-119A (08/01/93);
VOSH PD 12-234B (11/01/13); and
VOSH PD 02-065B (09/15/93)

Effective Date 01 February 2016

Expiration Date Not Applicable

Action Directors and Managers shall ensure that policies and procedures established in this Directive are uniformly enforced and field personnel understand and comply with the requirements included in this Directive.

C. Ray Davenport
Commissioner

Distribution: Commissioner of Labor and Industry Director of Cooperative Programs
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VOSH Legal Support & IMIS Staffs

Attachment: 80 FR 25365 (04 May 2015) or refer to:
http://www.osha.gov/FedReg_osha_pdf/FED20150504.pdf

I. History of the Virginia Unique Confined Space Standard

In the absence of federal proposed rulemaking that adequately protected workers from atmospheric, mechanical and other hazards, the Safety and Health Codes Board (the Board) led development of, and subsequently adopted, a Virginia Unique Confined Space standard applicable to general industry and construction, as well as telecommunications.

On October 28, 1985, the Department of Labor and Industry and the Board published in the Virginia Register a Notice of Intended Regulatory Action (NOIRA) to adopt a Confined Space Standard for General Industry and the Construction Industry. A proposed standard was then published on November 24, 1986, in the Virginia Register, followed by a 60-day public comment period and public hearings.

On March 23, 1987, the Board adopted the Virginia unique standard regulating Confined Spaces in General Industry and the Construction Industry, §1910.146, with amendments to the telecommunications industry, §1910.268(t), adopted on June 29, 1987. This action was in response to the written and oral public comments received to split the proposed standard into two standards – one for the Telecommunications Industry and one for the rest of General Industry and the Construction Industry. The two standards were essentially identical, except for provisions in the Telecommunications Standard, dealing with mechanical ventilation, atmospheric testing, requiring the use of traffic control devices when work was being done on streets and highways, and the effective dates. The General Industry and Construction Industry Standards became effective on January 1, 1988. The now separate Telecommunications Standard contained effective dates of November 15, 1987, for mechanical ventilation portions of the standard, and July 1, 1988, for the remaining requirements.

On January 14, 1993, federal OSHA issued the General Industry Confined Spaces Standard (*58 FR 4462*) which did not apply to the construction industry. (*80 FR 25369*) The scope of the Virginia unique Confined Space standard previously extended to both general industry and the construction industry; but on June 21, 1993, the Board adopted an identical version of the new federal identical Permit-Required Confined Spaces Standard for General Industry, §1910.146. The Board also amended the Virginia Confined Space Standard by deleting the applicability of the Virginia Standard to general industry, thereby, restricting its applicability to the construction industry. As a result, the most recent Virginia standard was renamed the “Virginia Confined Space Standard for the Construction Industry, CNSP.146,” and remained in effect for the Construction Industry only. The Virginia effective date was September 1, 1993.

On November 28, 2007, OSHA published a proposed rule for Confined Spaces in Construction (*72 FR 67351*).

II. Existing Virginia Unique Standards Impacted

1. The adoption by the Board of the new comprehensive federal final rule for Confined Spaces in Construction for VOSH necessitated the repeal of the unique Virginia Confined Space Standard in Construction, 16VAC25-140-10, et seq., because it has been replaced by the new federal rule.
2. This repeal necessitated the repeal of two other standards: the unique Virginia Underground Construction Standard, 16VAC25-150-10, et seq., and the unique Virginia Excavation Standard, 16VAC25-170-10, et seq., as these two standards referenced Virginia Confined Space in

Construction Standard that has been repealed.

3. The repeal of the unique Virginia Underground Construction Standard, 16VAC25-150-10, et seq. and the unique Virginia Excavation Standard, 16VAC25-170-10, et seq., necessitated the adoption of federal identical versions of the Underground Construction Standard, 29 CFR Part 1926.800, and the Excavation Standard, 29 CFR Part 1926.650 facilitating the VOSH Program to retain its “as effective as” status required by the state plan agreement with federal OSHA for the VOSH enforcement program.

III. Background of Federal Standard

On March 25, 1980, federal OSHA published an Advanced Notice of Proposed Rulemaking (ANPR) on confined spaces for the construction industry (*45 FR 19266*). Although OSHA received many comments, it took no further action on this regulatory initiative at that time.

IV. Summary.

A. General

While the Virginia unique Confined Space Standard for Construction addressed many of the unique construction provisions now covered in the new federal Confined Spaces in Construction standard. The new federal standard is more comprehensive than the Virginia unique standard it replaced in that it provides, among other things, additional defined terms, more detailed provisions regarding training, more detailed permit-required confined space program, requirements for coordinated activities when there are multiple employers at the worksite, and allowing for the suspension of a permit, rather than cancellation, when entry conditions change requiring evacuation of the confined space.

The new federal Construction Confined Spaces standard requires employers to ensure that their workers are informed about the existence, location, and dangers posed by each permit-required confined space, and that they may not enter such spaces without authorization.

Like in the General Industry standard, a “confined space” is defined as any space that has limited means of entry and/or exit, is large enough for a worker to enter it, and is not intended for regular/continuous occupancy. Such examples would include: the need to use a ladder, a doorway that is too small to exit while walking upright, no ventilation or lighting, and lacks sufficient room to work or maneuver about.

Additionally, a space may also be a permit-required confined space if it has a hazardous atmosphere, has the potential for engulfment or suffocation, has a layout that might trap a worker through converging walls or a sloped floor, or contains any other recognized serious safety or health hazard.

Employers are required to train workers involved in permit-required confined space operations so that they can perform their duties safely and understand the hazards in permit spaces and the methods used to isolate, control or protect workers from these hazards. Workers not authorized to perform entry rescues shall be trained on the dangers of attempting such rescues.

The new federal final rule is similar in content to the general industry confined spaces standard, §1910.146, and reflects that standard's organization, language, and most substantive requirements. Some of the aspects of construction industry activity that are not present in general industry work are addressed by modifications, including:

- information exchange requirements to ensure that multiple employers have shared vital safety information;
- addressing the heightened need, on constantly evolving construction worksites for communication, worksite evaluation; and
- training for confined spaces in construction.

B. New Requirements of the Confined Spaces in Construction Standard

The new final rule contains five (5) new requirements for confined spaces in construction, which include:

1. More detailed provisions requiring coordinated activities when there are multiple employers at the worksite. This will ensure hazards are not introduced into a confined space by workers performing tasks outside the space. An example would be a generator running near the entrance of a confined space causing a buildup of carbon monoxide within the space.
2. Before work begins, a requirement for a competent person to evaluate the work site and identify confined spaces, including permit spaces. When there are changes in use or configuration to the non-permit space, the competent person shall also reevaluate the space and reclassify it, if necessary.
3. Requirement for continuous atmospheric monitoring whenever possible.
4. Requirement for continuous monitoring of engulfment hazards. For example, when workers are performing work in a storm sewer, a storm upstream from the workers could cause flash flooding. An electronic sensor or observer posted upstream from the work site could alert workers in the space at the first sign of the hazard, giving the workers time to evacuate the space safely.
5. Allowance for the suspension of a permit, instead of cancellation, in the event of changes from the entry conditions list on the permit or an unexpected event requiring evacuation of the space. The space shall be returned to the entry conditions listed on the permit before re-entry.

C. Confined Spaces Standard in Construction Industry clarifies existing requirements in General Industry Standard

OSHA added provisions to the new rule that clarify existing requirements in the General Industry standard, §1910.146. These include:

1. "Alternate Procedures" - Requiring that employers who direct workers to enter a space without using a complete permit system prevent workers' exposure to physical hazards

through elimination of the hazard or isolation methods, such as lockout/tagout;

2. Requiring that employers who are relying on local emergency services for emergency services arrange for responders to give the employer advance notice if they will be unable to respond for a period of time because they are responding to another emergency, attending department-wide training, etc.; and
3. Requiring employers to provide training in a language and vocabulary that the worker understands.

D. New Defined Terms in Confined Spaces in Construction Standard

Several important defined terms were added in §1926.1202:

1. “Entry employer” directs workers to enter a space and informs the controlling contractor of the program followed and hazards encountered in permit spaces;
2. “Controlling contractor”, i.e., the general contractor, has overall responsibility for construction at the worksite, and is responsible for coordinating entry operations when there is more than one entry employer, and when other activities on the site could foreseeably result in a hazard in the permit space. The controlling contractor is required to pass information, if available, about permit confined spaces at the worksite;
3. “Host employer” owns or manages the property where the construction work is taking place. Where the host employer has information about permit space hazards on the site, it shall share that information with the controlling contractor, who is then responsible for sharing it with the other employers on the site. This would exclude homeowners where there are no employees;
4. “Entry” – similar to the general industry standard at §1910.146, but regardless of the events or actions that caused the entry, such as the employee falling into the confined space.
5. “Entry rescue” was added to clarify the differences in the types of rescue employers can use.

E. Differences Between Confined Spaces in Construction Standard and the General Industry Confined Spaces Standard, 1910.146.

Due to the differences between construction work and general industry, there are several regulatory provisions in this new construction standard which differ from the existing general industry standard. Provisions in the new construction standard:

- address construction-specific issues;
- account for advancements in technology and equipment that allow for continuous monitoring of hazards, and improve the enforceability of the requirements;
- address concerns raised by the regulated community during the federal OSHA comment period and at the federal OSHA public hearing; or
- reflect improvements in clarity of language and enforcement considerations that have been addressed in interpretations of the general industry standard.

V. Confined Spaces in Construction - Generally

A. Types of Confined Spaces That May Be Found on Construction Sites

- Manholes, i.e., sewer, storm drain, electrical, communication, or other utility;
- Water mains; lift stations;
- Tanks, i.e., fuel, chemical, water or other liquid, solid or gas;
- Pits, i.e., elevator, escalator pump, valve or other equipment;
- Bins; boilers; incinerators; scrubbers; concrete pier columns; transformer vaults; heating, ventilation, and air conditioning (HVAC) ducts;
- Precast concrete and other pre-formed manhole units;
- Drilled shafts; enclosed beams; vessels; digesters; cesspools; silos;
- Air receivers; sludge gates; air preheaters; turbines; chillers; and
- Bag houses; mixers/reactors; crawl spaces; attics; and basements, before steps are installed.

B. Common Hazards

- Acute atmospheric (respirable) hazards, e.g., hydrogen sulfide, carbon monoxide, low oxygen, excessive oxygen, and other toxic gases and particulates (not chronic or long term, such as lead or asbestos exposure);
- Explosive hazards, including flammable gases in concentrations above 10% of the lower explosive limit (LEL), combustible dusts, and other explosive/flammable materials; and
- Physical hazards, including tripping hazards, fall hazards, struck-by hazards, and electrical hazards.

C. Activities Excluded from Confined Spaces in Construction Standard

The Confined Spaces standard applies to construction work performed in confined spaces, except for certain construction activities that are subject to confined space provisions in other OSHA construction standards. The activities excluded from this standard are:

- Diving – regulation by Part 1926, Subpart Y;
- Excavations – regulation by Part 1926, Subpart P; and
- Underground Construction, Caissons, Cofferdams and Compressed Air – regulated by Part 1926, Subpart S.

VI. Other VOSH Standards Impacted by Adoption of the new Confined Spaces Standard in Construction standard

Impacts or revisions to other existing standards of the Board which have become necessary as a result of the Board's adoption of the new Subpart AA for Confined Spaces in Construction are as follows:

A. Existing Federal-Identical Standards Impacted by Confined Spaces in Construction Standard

Federal OSHA removed paragraph (b)(6) of §1926.21, Safety Training and Education, which required all employees entering into confined or enclosed spaces to be instructed by their employer as to the nature of the hazards involved, the necessary precautions to be taken, and in the use of the protective and emergency equipment required.

OSHA also amended Subpart V of Part 1926 – Power Transmission and Distribution – which governs construction work involving power transmission, generation, and distribution, to replace references to the general industry confined spaces standard with references to this final construction rule, because OSHA specifically tailored this final rule to construction work, making the confined spaces in this construction rule more appropriate than the general industry standard for construction work addressed by Subpart V.

OSHA amended paragraphs §1926.953(a) and (g) of Subpart V by replacing each reference to “§1910.146” with a reference to “Subpart AA”, so that the appropriate construction standards apply, rather than a general industry standard. Additionally, OSHA added a sentence to paragraph 1926.953(a) to clarify that employers may comply with the requirements of §1926.953 “in lieu of” most of the requirements in new Subpart AA when the entry into the enclosed space is a routine entry for Subpart V work and there is no hazardous atmosphere in the space. The purpose of this clarifying sentence is to help avoid any employer confusion as to which standard applied.

The note to the definition of “enclosed space” in paragraph (x) of §1910.269, Electric Power Generation, Transmission, and Distribution, states that enclosed spaces expected to contain a hazardous atmosphere meet the definition of “permit spaces” in §1910.146, and entry into them shall conform to that standard. In §1926.968, Definitions, federal OSHA added a note to the definition of “enclosed space” that corresponds to the note in paragraph §1910.269(x), replacing the reference to “§1910.146” with a reference to “Subpart AA. “

CONFINED SPACES IN CONSTRUCTION

Part 1926, Subpart AA, §§1926.1200 through 1926.1213; Final Rule; and

OTHER RELATED PROVISIONS:

**§1926.953, Enclosed Spaces; and
§1926.968, Definitions**

EXCAVATIONS

§§1926.650 through 1926.652

UNDERGROUND CONSTRUCTION, §1926.800

As Adopted by the

Safety and Health Codes Board

Date: 29 October 2015



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: 01 January 2016

16VAC25-175-1926.1200 through 1926.1213, Confined Spaces in Construction

16VAC25-175-1926.953, Enclosed Spaces

16VAC25-175-1926.968, Definitions

16VAC25-175-1926.650 through 16VAC25-175-1926.652, Excavations

16VAC25-175-1926.800, Underground Construction

When the regulations, as set forth in the aforesaid regulations, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

August 3, 2015

January 1, 2016